

## REPORT ON ADMINISTRATIVE HEARINGS CONDUCTED BY THE DEPARTMENT OF MOTOR VEHICLES

### Introduction

The Department of Motor Vehicles (DMV) is required to conduct administrative hearings under the Uniform Administrative Procedure Act and by the provisions of Title 14 and the Regulations of Connecticut State Agencies promulgated under that title. When the actions of the DMV adversely affect the status of a credential that it issues, the person against whom the action is taken must be afforded an opportunity for a hearing. The DMV also conducts hearings when it is specifically required to do so by statute or regulation (e.g. dealer bond invocation under section 14-52(b)).

In 2009, the DMV held approximately 6,000 hearings through its Administrative Hearings Unit, which is a unit contained in the DMV's Legal Services Division. This number included approximately 1,500 adjudications hearings and 4,500 administrative per se hearings held under section 14-227b of the Connecticut General Statutes, the implied consent law. Up to 3 separate hearing dockets are scheduled and heard daily at the DMV office in Wethersfield. Additionally, administrative per se hearings are held 2 days per week in each of three other locations- Old Saybrook, Bridgeport and Waterbury.

### Adjudications Hearings

This subset of hearings results from the DMV's revocation, disqualification, withdrawal, suspension or cancellation of a license (defined in section 4-166 as including "...the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes"). It includes hearings requested by divisions within the DMV that have taken an administrative action against an individual or business licensed by DMV. Businesses licensed or regulated by DMV include dealers and repairers, automobile manufacturers, drivers' schools, school transportation and motor carriers. The categories of hearings for individuals include public service licensing, medical qualifications, driver services, commercial motor vehicle licensing, document fraud, insurance compliance and title.

Adjudications hearings are usually held within 4 to 5 weeks following entry of the case into the adjudications system and the mailing of notice. When a hearing must be expedited, it is scheduled 10 days after the mailing of notice. This occurs

on occasion, including when the DMV imposes a summary suspension in accordance with section 4-182 of the Connecticut General Statutes on a finding that the public health, safety or welfare requires emergency action.

A complex adjudications case will be prepared and brought before a hearing officer by an attorney functioning as a case presenter. Other less complex cases are presented to the hearing officer by an employee of the unit that handles the specific agency functions that are the subject of the proceeding. At the conclusion of the hearing, the hearing officer renders a final decision in accordance with section 4-180 of the Connecticut General Statutes.

### **Administrative Per Se Hearings**

Section 14-227b of the Connecticut General Statutes is known as the implied consent law. It authorizes an administrative license suspension following an arrest for operating under the influence of liquor or drugs pursuant to section 14-227a. It affords the arrestee the opportunity for a hearing which is limited in scope to four issues for a standard arrest and five issues in a case in which the arrest is based upon blood test results obtained by warrant.

In 2009, the DMV reviewed and entered into its system approximately 13,000 police reports resulting from DUI arrests in the state. This resulted in 10,500 license suspensions and approximately 4,500 hearings.

The unit that handles administrative per se cases performs the following functions: reviews and processes every arrest report that is sent from a law enforcement agency; enters all arrests into the agency database; sends out suspension notices giving the suspension date and the last date to request a hearing; sends suspension affirmation letters in cases in which no hearing is requested; accepts hearing requests and schedules hearings for one of 4 locations where hearings are held around the state; accepts and processes requests for continuances; conducts hearings; renders decisions prior to the effective date of the person's scheduled suspension; enters hearing decisions; sends out hearing decisions prior to the effective date of the person's scheduled suspension; enters the suspension or restoration in the operator's record.

Hearings held under section 14-227b of the Connecticut General Statutes are subject to procedures that are unique to those hearings. There are processes and time limitations to which the agency must strictly adhere. These hearings do not follow the course of an administrative hearing conducted under the UAPA and typical agency rules of practice. Under Connecticut law, a person who is arrested for operating under the influence must have a license suspension imposed within 30 days after an arrest, or forty-five days if the person has

requested a hearing and a continuance. If the arrestee has had a conviction under section 14-227a within the previous 10 years, or is involved in an accident resulting in a fatality, that person's license is subject to an immediate suspension. In those situations, the DMV sends the licensee a suspension notice immediately upon receiving the police report, indicating that his or her license has been suspended. In either situation, the licensee is afforded a hearing. In the case of a non-immediate suspension, DMV has a procedure in place through which it is able to schedule the hearing, hold the hearing and mail the hearing decision prior to the date of the licensee's suspension. The goal of an administrative license suspension program for operating under the influence is to remove impaired drivers from the state's roads as expeditiously as possible while still affording them due process. Federal highway funds are tied to the successful execution of this program.

### Staffing

There are presently 12 part time administrative hearing officers within the DMV Administrative Hearings Unit who are reappointed annually by the commissioner under the authority of sections 14-4a, 14-11 and 14-110. Each hearing officer is a licensed attorney, works 1 or 2 8-hour days per week conducting hearings for the DMV and receives an hourly rate of pay of \$42.98. In addition to conducting hearings, hearing officers also review and rule on petitions for reconsideration.

The Administrative Hearings Unit consists of 1 Division Manager (MP-65), 1 Office Supervisor (Administrative Clerical NP-3 Bargaining Unit, CL22), 2 Administrative Assistants (CL19), 6 Processing Technicians (CL16) and 1 Secretary 2 (CL 16). These employees are responsible for all of the functions related to administrative hearings as outlined herein, as well as for responding to subpoenas directed to the commissioner and for preparing documents for administrative appeal files.

The Administrative Hearings Unit also employs 3 full-time Hearing Reporters 2 (CL19) and 1 part-time Hearing Reporter 1 (CL17) who are responsible for recording verbatim testimony during hearings and preparing and typing transcripts as required. They also assist hearing officers in maintaining an efficient daily docket and are accountable for the receipt and transport of the case files and original evidentiary documents to the various hearing locations.

The Legal Services Division employs a Staff Attorney 3 (AR-32) who currently evaluates adjudications cases and prepares and "prosecutes" the cases which present complex factual and/or legal issues. In addition, she prepares for and conducts settlement conferences and participates in other informal proceedings

specified in the DMV rules of practice. Administrative per se cases are evaluated on an individual basis to determine whether a case presenter is needed. In a small percentage of the cases, a full-time Staff Attorney 2 (AR-28) prepares and presents the case on behalf of the state, which often involves the preparation of one or more witnesses from a law enforcement agency. Presently that attorney is being paid through a grant from the National Highway Traffic Safety Administration (NHTSA).

## Issues Militating Against the Inclusion of DMV in a Centralized Division of Administrative Hearings

### 1. Hearing Volume

The DMV's hearing volume sets it apart from most other state agencies. The DMV disposes of 5,500 to 7,000 cases per year. Currently DMV has a system in place through which it is able to dispose of adjudications cases usually within 60 to 90 days, and administrative per se cases within 30 to 45 days. In addition, a continuance is requested in approximately 60% of the total number of cases, which requires the placement of those cases on a second hearing docket. This high volume of cases and even higher volume of total hearings are addressed through the use of part-time hearing officers and multiple hearing locations, as well as internal coordination among a number of different units within the agency. Aggrieved consumers of DMV's business licensees have access to dispute resolution and hearing processes through which they may be made whole in a relatively short period of time. Similarly, licensees who pose a danger on the roads may be removed quickly and still have the opportunity to contest the removal.

### 2. Staff

The DMV currently requires most adjudications hearings to be presented to a hearing officer by one or more DMV staff members from the business unit that handles the functions that are the subject of the proceeding. All adjudications hearings are held at the DMV in Wethersfield, and all staff members work in the same location. This results in efficient use of time for both the staff and the hearing officers. Any delay or continuance of the hearing is communicated easily to witnesses, who in turn may never be required to leave their work stations. Hearings held at a centralized Division of Administrative Hearings will require staff to leave the DMV building and travel to another location. Attendance at these hearings will disrupt the day to day operations of the DMV through staff depletion. Delays in or continuances of the proceedings will further impair the productivity of staff members and the business units from which those staff members come.

### 3. Time Limitations/Cost Savings

In addition to managing a high volume of hearings, the DMV has been successful at adhering to the time limitations mandated by the administrative per se program. The lapse of time between the date of arrest and the date of license suspension does not exceed 45 days. At present, the DMV is managing the workflow from case entry to conclusion, resulting in a seamless process that allows it to meet statutory deadlines. Under a centralized system, DMV presumably will be responsible for entering cases and generating suspension notices. Thereafter, it will be necessary for the centralized office to undertake functions related to the hearing, including obtaining files, answering intake calls, scheduling hearings (which must be requested within 7 days of receiving a suspension notice), generating hearing notices, scheduling continuances, conducting hearings, writing decisions and entering decisions. The files and decisions will then be required to be returned to the DMV in order to send decision letters to the respondent and his or her attorney, and to restore a license if required. The potential for exceeding the time limitations increases significantly due to the transfer of functions.

A centralized Division of Administrative Hearings that does not utilize hearing officers that are presently conducting hearings for DMV will be at a disadvantage. Hearings will be protracted due to the administrative law adjudicator's lack of knowledge of the body of law that has arisen for administrative per se and the other areas covered under motor vehicle statutes and regulations. In order to realize cost savings in the form of benefits, the centralized Division of Administrative Hearings will be required to employ full-time administrative law adjudicators. The benefit realized from having multiple hearing locations operating simultaneously will be gone. The numbers of hearings will be reduced, resulting in greater hearing backlogs and a failure to adhere to time limitations.

### 4. Legal Representation

The Legal Services Division has only two staff attorneys who are available to present cases. Because of this limitation, these attorneys are able to represent the DMV in only a small percentage of the cases brought to hearing. The attorney who presents adjudications matters is employed in DMV's Legal Services Division, and serves as staff counsel. It would not be possible for the DMV to assign this attorney to present hearings in a centralized environment as she would be unavailable to assume any other duties in the Legal Services Division. The attorney who presents per se cases is paid from a federal grant that is likely to be terminated if DMV hearings were transferred.

In a centralized Division of Administrative Hearings, the DMV would be at a disadvantage if it did not have legal representation at every hearing brought

before an administrative law adjudicator. Attorneys would be required to prepare each case, to question witnesses and elicit facts, and to make arguments of law in support of actions that the DMV has taken. The cost of agency representation would greatly exceed the cost savings over the course of 6,000 cases.

#### 5. Appeals

Under the current system, the hearing officer is a designee of the Commissioner, and his or her decision is the decision of the agency. Under this system, only the respondent has the right to appeal the agency's decision. Both the DMV *and* the respondent will have the opportunity to appeal decisions made by an administrative law adjudicator in the Division of Administrative Hearings. This will substantially increase the number of appeals from administrative hearings, and lead to backlogs and inefficiencies in the functioning of other agencies and branches of government.

#### 6. Hearing Locations

The DMV uses four different hearing sites strategically located throughout the state for administrative per se cases (Bridgeport, Old Saybrook, Waterbury and Wethersfield). A hearing is typically scheduled at the location that is closest, geographically, to the place of the arrest. This is primarily for the convenience of any law enforcement officer that may be summoned to testify, typically by the respondent. Unless the Division of Administrative Hearings plans to conduct proceedings in geographically diverse locations, witnesses will be greatly inconvenienced when they are summoned to testify. This may deter witnesses from appearing.

#### 7. Technical Issues

In order for the DMV and a proposed Division of Administrative Hearings to function with any continuity, systems requirements for transferring information should be consistent. Currently many of the DMV functions are automated throughout the process from intake to disposition. For instance, when a respondent requests a continuance, the system automatically adjusts the effective date of the respondent's suspension for fifteen days beyond the original suspension date. Unless the systems communicate between DMV and the proposed Division of Administrative Hearings, much of this work will be required to be completed manually resulting in more work for both agencies. This also creates the potential for additional time delays and increased human error.